

THE DUTIES
OF
A JUDGE ADVOCATE,

A GENERAL COURT-MARTIAL,

COMPILED FROM VARIOUS WORKS ON MILITARY LAW.

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The accompanying treatise is well calculated to be of service to officers called on to perform the duty of Judge Advocate. In many cases records are so defective, through a want of knowledge on the part of Judge Advocates, that they vitiate the entire proceedings. I recommend that the sanction of the War department be given to this treatise.

SAM. JONES,
Major-General.

P R E F A C E.

It has been found that many of those appointed to fill the very important position of Judge Advocate, however well versed in general knowledge and legal attainments, are, nevertheless, deficient in those points of practice and clerical nicety which are requisite in the proper preparation of the proceedings of a general court-martial. Many excellent works are extant, and from them can be obtained all the information that could be desired ; but these works are now difficult to be procured, and an officer in the field, called upon, for the first time, to discharge the responsible and multifarious duties of Judge Advocate, feels at a loss, unaided by them, to know how these duties are to be conducted.

To meet this want, the following treatise has been prepared. The main object in its compilation has been to present a brief, though at the same time comprehensive, direction for the management of a case from its inception to its close ; with the proper method of recording the several points likely to arise during the trial. It is presumed that the Judge Advocate is already fully instructed in the rules of evidence, the general principles of law, and the practice of criminal courts ; and, therefore, those subjects are scarcely touched upon. For them recourse must be had to other works, whose place this does not pretend to supply.

By means of this treatise access is had to such works as Tytler, McArthur, Simmons, Adye, O'Brien, De Hart, Hough and others, now beyond the reach of all, and from which copious extracts are taken, to show the several duties which devolve on the Judge Advocate. For these extracts the compiler is mainly indebted to Captain Hughes' excel-

lent book, which bears the same title as this. Within a short compass can thus be obtained the information found in them, and it is now the privilege as well as the duty of the Judge Advocate to instruct himself in all those matters pertaining to his position, remembering that

“A Judge Advocate is the mainspring of a court-martial; on him the court depends for information concerning the *legality* as well as the *regularity* of their proceedings; if he errs, all may go wrong.”—*A dye.*

R. C. GILCHRIST.

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CHAPTER I.

DUTIES OF JUDGE ADVOCATE PREVIOUS TO ASSEMBLY OF A GENERAL COURT-MARTIAL.

1. The orders directing the assembly of a general court-martial having issued, and a copy of them transmitted to the Judge Advocate nominated to conduct the proceedings, together with such instructions as may be considered necessary for his guidance, it is his province to summon every person whose testimony is, in any shape, necessary for the prosecution or defence; and the Judge Advocate is held responsible that all witnesses whose names are appended to the charges (or appear in the proceedings of a court of inquiry, if there has been one), and whose evidence can be necessary to the trial, are duly summoned and properly examined. He must, from the information of the accuser, and in all practicable ways, instruct himself, before entering on the trial, in all the circumstances of the case, and by what evidence the whole particulars are to be brought out. Of these it is proper to prepare in writing a short analysis for his own regulation in the conduct of the trial and examination of witnesses, so that he may not waste the time of the court by adducing witnesses collected at random, who may prove really incompetent to furnish any information, and whose presence in their respective commands may be more needed for the discharge of their regular duties.

2. A Judge Advocate, on receiving instructions to conduct a trial, should immediately ascertain if a copy of the charges on which the prisoner is to be arraigned has been transmitted to him. Having ascertained that he has received a copy

of the charges preferred, the Judge Advocate should immediately address letters both to the prosecutor (if there be one) and prisoner; and, on receiving the names of any witnesses required for the prosecution and defence, issue a summons to each individual: but he should not summon any witness at the expense of the government, nor any officer of the army, without the order of the court, unless satisfied that his testimony is necessary to the ends of justice.*

3. The summons should be sent to the commanding officer of the regiment to which the witness belongs; by which arrangement it is known to all parties when the services of the several witnesses are required.

4. If either of the parties wish for the evidence of a citizen of the state where the court is held, he must obtain a regular summons from the court, and the citizen *cisobeying* the summons may, on the application of the Judge Advocate to the commander of the army, be arrested by military force and brought before the court, and may be held in close confinement until he or she shall consent to testify.†

CHAPTER II.

DUTIES OF JUDGE ADVOCATE AT A GENERAL COURT-MARTIAL.

1. A Judge Advocate appears at a court-martial in three distinct characters: *First*, as an officer of the court: *Secondly*, as the adviser of the court in matters of form and law: *Thirdly*, as public prosecutor. In the first of these characters the Judge Advocate registers and records all the acts of the court, and all oral evidence, as near as may be in the very words of the witness; he

* Army Regulations, 868. † Act of February 17. 1864.

*

notes the hour of assembly and adjournment; and generally all incidental occurrences, particularly the clearing of the court, the cause thereof, and the result of the deliberations in closed court. The Judge Advocate advises the court on points of law, custom, and form, and invites its attention to every deviation therefrom.*

2. The Judge Advocate can not, on any grounds, be challenged, as he acts at a general court-martial on behalf of the government, and has no judicative voice.†

3. A Judge Advocate should give every reasonable assistance to the prisoner in his defence, either in point of law or of justice. It is his duty that the proof, on both the part of the government and the prisoner, should be properly laid before the court; and where any doubtful point may arise, he should rather incline to the part of the prisoner; and nothing should induce him to omit any circumstances in the minutes of the proceedings that may have a tendency to palliate the charges against the party accused.‡ Justice is the object for which the court is convened and the Judge Advocate appointed; to this aim all their inquiries and attention ought to be directed; and if, in the prosecution of the design, the prisoner should be benefited, the efforts of the court, or of the Judge Advocate, will have been satisfactorily and legitimately exerted.*

CHAPTER III.

DUTIES OF JUDGE ADVOCATE AS AN OFFICER OF THE COURT.

1. As an officer of the court the Judge Advocate reads the orders constituting it, administers

* Simmons.

† De Hart.

‡ McArthur.

the requisite oaths, arraigns the prisoner, and puts down the questions to the witnesses; during the trial, also, it is his duty to take down in writing the evidence of the several witnesses; and although this may appear to be a matter of little importance, still the correctness of the proceedings, and the expediting of the trial, depend much on the quickness and precision with which the Judge Advocate performs this seemingly unimportant part of his duty.* The proceedings should be written in a clear and legible hand, without erasures or interlineations; the pages are to be numbered, and the sheets are to be stitched together at the top, and made up separately, upon each trial.

2. In the heading of the proceedings it must invariably be stated by what authority the court is assembled—thus:

Proceedings of a general court-martial, convened at _____, by virtue of the following order, viz: then follow all the orders, arranged according to their respective dates or numbers.

3. The officers nominated to compose a general court-martial having assembled at the place and time appointed in orders, the Judge Advocate stands up and calls over their names; each member, on answering to his name, takes his seat on either side of the President according to his rank. The Judge Advocate sits opposite to the President, the prisoner to the right, and the witness on the left of the Judge Advocate; the public, military, and civilians take their seats around the room at a short distance from the court.

4. The court being formed, the prisoner is called before it by name, which circumstance the Judge Advocate thus records on the proceedings :

Captain _____, of the _____ regiment _____, appears as prisoner before the court; or _____, private in company _____, _____ regiment _____, is called into court.

* Kennedy.

CHALLENGE.

5. On the prisoner being called into court the Judge Advocate reads the orders convening the court; after which he asks the prisoner if he has any exception or cause of challenge to make to any of the officers nominated to sit on the court-martial before which he appears for trial. If he replies in the negative, the trial proceeds.

6. But if the prisoner objects to any of the members, the Judge Advocate puts the following question to him : Be pleased to state your reasons for objecting to Col. _____ sitting on the court-martial for your trial ? The answer to this question, with all the evidence which the prisoner may wish to adduce to prove the validity of the challenge, must be taken down regularly, and fully recorded at length on the proceedings. The member objected to then withdraws, and the court being closed, deliberates and decides on the validity of the challenge.

7. The usual manner of recording such deliberations is as follows :

The court is closed, and having taken into consideration the _____, deems the objection valid ; or invalid ; or decides the papers handed shall or can not be received ; or the question shall or shall not be put to the witness. The court is opened, and the foregoing decision is read.

The court is not bound, and generally ought not, to give the grounds of that decision.*

8. The closing and opening of the court should be invariably noted on the proceedings.

9. When practicable, all challenges should be admitted. It is not only right to be as mild as possible toward a prisoner, but it is right also to let the prisoner and the public see that such is the case. A culprit should never be made to appear in the light of a martyr; for when this takes place,

* Sir C. J. Napier.

much of the advantage of punishment is lost; besides, no officer who has been challenged likes to sit as a member of a court, and it is hard to oblige him to do so, unless the good of the service demands it.*

10. The prisoner may challenge the whole court as being incompetent to try him, and object to its jurisdiction. In this case the court is cleared; it decides upon the validity of the prisoner's objections, and declares the result of its deliberations in open court. Should the decision be in favor of the prisoner's objection, the court separates, and the Judge Advocate reports and applies to superior authority for instructions.†

11. The right of challenge belongs as well to the Judge Advocate as to the accused, and should be exercised when occasion requires.†

THE COURT SWEARN IN.

12. When all the objections are disposed of, the Judge Advocate proceeds to swear in the court by administering the prescribed oath to the president, and then to the members collectively on his right and left; all standing, lift the right hand ungloved, while the Judge Advocate recites, in an audible voice:

" You, Colonel A. B., Major C. D., Captain E. F. (thus naming, with his rank, each member of the court), do swear that you will well and truly try and determine, according to evidence, the matter now before you between the Confederate States of America and the prisoner to be tried, and that you will duly administer justice, according to the provisions of 'An act establishing rules and articles for the government of the armies of the Confederate States,' without partiality, favor, or affection; and if any doubt should arise, not explained by said articles, according to your conscience, the best of your understanding, and the custom

* O'Brien, 253.

† De Hart.

of war in like cases ; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority ; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law. So help you God."

13. The President of the Court shall then administer to the Judge Advocate the following oath, the members of the court remaining standing, the Judge Advocate also standing, with his right hand lifted, ungloved :

" You, A. B., do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law ; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

14. The prescribed oaths having been administered, the Judge Advocate records on the proceedings :

The court was then duly sworn by the Judge Advocate, and the Judge Advocate was duly sworn by the presiding officer of the court in the presence of the accused.

15. It is to be observed that "on all trials for felony the defendant must personally be present,"* and the record must show that he was present during the examination of all the witnesses up to the final closing of the court for deliberation. In the civil courts "this right is so inherent and inalienable, that a judgment will be reversed where it appears that the defendant was absent at the rendition of the verdict, though his presence was at the time waived by the counsel."†

* 1 Chitty, C. L. 413 : 2d Hale, 216. † 6th Harris, 102.

COUNSEL ALLOWED THE PRISONER.

16. It is at this stage of the proceedings that the prisoner asks permission of the court to be allowed the assistance of a professional gentleman, or a friend in the court, during the trial; but no person is, on any account, to be permitted to address the court, or to interfere in any manner with its proceedings, except the parties themselves. Such assistance must be restricted to the giving advice, framing questions, or offering, in writing, any legal objections that the course of the proceedings may appear to render necessary.* The counsel or friend should commit to paper the necessary interrogatories as they may arise, which the prisoner gives, on separate slips, to the Judge Advocate.†

POSTPONEMENT OF TRIAL.

17 Application for delay or postponement of trial must, when practicable, be made to the authority convening the court. When made to the court it must be before plea, and will then, if in the opinion of the court well founded, be referred to the authority convening the court to decide whether the court shall be adjourned or dissolved, and the charges reserved for another court.‡

18. Upon application by the accused for postponement on the ground of absence of witness, it ought distinctly to appear on oath: first, that the witness is material, and how; second, that the accused has used due diligence to procure his attendance; and, third, that he has reasonable ground to believe, and does believe, that he will be able to procure such attendance within a reasonable time stated.§

CHARGES READ AND DISCUSSED.

19. The court having been duly constituted by

* Kennedy.

† Army Reg., p. 864.

‡ Hough.

§ Idem, p. 865.

the prescribed oaths having been administered, the Judge Advocate reads the charges in an audible voice; on hearing which, should any doubt arise, whether originating with the members of the court or with the parties on trial, with regard either to the competency of the court's jurisdiction or the relevancy of the charges, these doubts must now be discussed. A general court-martial ought to satisfy itself, previous to the arraignment of the prisoner, that the facts alleged in the charge brought before it do constitute the criminal offence intended, and that they are described in such a *legal* manner as would authorize it to award, on conviction, the punishment which the law prescribes for each particular offence.*

20. If any doubts arise or any objection is made to the charges by the court, Judge Advocate, or prisoner, the proceedings, and the decision of the court thereon, must be regularly and fully recorded.

21. It must, however, be borne in mind that, when a charge has been approved by proper authority, and ordered to be investigated, it is not competent for the Judge Advocate or any other person to make alterations in it without the consent of such authority being previously obtained.†

ARRAIGNMENT OF PRISONER.

22. The Judge Advocate now asks the prisoner, by his name and designation :

Captain ——, you have heard the charge (or charges) preferred against you ; how say you, guilty, or not guilty ?

23. The ordinary plea is “*not guilty*,” but sometimes the prisoner stands mute, or pleads “*guilty*.” In either case the trial proceeds; for it is essential that the facts and particulars should be known to those whose duty it is to report on the

* Kennedy. See chapter VII.

† Tytler.

case, or who have discretion in carrying the sentence into effect.* If there is any exception to this remark, it is where the specification is so full and precise as to disclose all the circumstances of mitigation or aggravation which accompanied the offence. Where that is the case, or where the punishment is fixed and no discretion is allowed, explanatory testimony can not be needed.†

24. Sometimes pleas in bar of trial are submitted by the prisoner for the consideration of the court: whatever the plea may be, it must be fully recorded on the proceedings [if a written statement of the plea is handed into court, it is read by the prisoner or the Judge Advocate, and then appended to the proceedings], as well as the decision of the court thereon. If the plea is considered valid, an extract of the proceedings of the court on this subject is sent to the authority who convened the court for his information and instructions, the court adjourning till they are received; but if the plea is considered invalid, such is duly recorded, and the trial proceeds—the decision of the court being communicated to the prisoner by the Judge Advocate on the court being opened to the public.*

25. The prisoner having pleaded to the charge, the Judge Advocate cautions all witnesses on the trial to withdraw, and to return to court *only* on being called.† Which is noted on the proceedings thus:

The witnesses are directed to retire.

EXAMINATION OF JUDGE ADVOCATE AND PROSECUTOR.

26. The Judge Advocate and prosecutor being necessarily present during the examination of all the witnesses, if required to give evidence, are sworn immediately after the opening of the case;

* Simmons.

† Opinions of A. G., 2, 637.

‡ Hughes.

nor would it be proper, at any other stage of the proceedings, to admit their examination or deposition in chief, except when called as witnesses for the defence.* And when the prosecutor's examination as a witness is finished, he should request permission to remain in court; which circumstance, and the court's acquiescence therein, should be noted on the proceedings thus:

The prosecutor here asks permission to remain in court, which request is granted.

27. But it is to be remarked that an informant is allowed to be present in court for the purposes of material justice, as an assistant to the Judge Advocate, and that he can not of himself propose any questions or make any observations whatever. Should anything occur to him during the proceedings, he must state it to the Judge Advocate, who, if he thinks the remarks are just, will avail himself of the suggestion.†

EXAMINATION OF A MEMBER OF THE COURT.

28. Notwithstanding there is no legal objection to a member of a court-martial giving evidence before the court of which he is a member, yet it certainly appears to be highly objectionable, especially when a member of a court is required to give evidence on the part of the prosecution. If it is ascertained, previous to the assembly of the court, that the evidence of an officer nominated on a court-martial is required, he should be immediately relieved; and if a member, after taking his seat and being sworn in, is called on to depose to facts, justice demands that he should not resume his seat as a member, to decide on evidence he has himself given; but when a member is called on to give evidence as to the character of a prisoner, no such objection exists; and in all cases it is customary for a member so sworn to give his testi-

* Simmons.

+ Kennedy.

mony as to the character of the prisoner, and then to resume his seat.*

WITNESSES CALLED IN AND SWORN.

29. When a witness is produced, and before he is sworn, any objection to his competency ought to be stated ; and the course of proceeding is, that the party who objects to the witness should state all his objections at the same time, in order to prevent unnecessary delay. These objections must be fully recorded on the proceedings.

30. All persons who give evidence before a court-martial are to be examined upon oath in the following words :

“ You swear, or affirm (as the case may be), the evidence you shall give in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God.”†

31. The prescribed oath or affirmation having been administered to the witness by the Judge Advocate, he enters a minute on the proceedings that such has been done, having previously recorded the rank, name, and occupation of the witness at full length.

CHARGES SHOULD NOT BE READ TO WITNESSES.

32. It is not essential to the ends of justice, or the regularity of the proceedings, nor by any means conducive to the better examination of witnesses, that the charges should be read to them ; on the contrary, the perusal of the charges to a witness has a tendency to put him at once upon a narrative, and not to keep him from it. The witness is always furnished with dates by it, and with other most essential particulars.‡

EXAMINATION OF WITNESSES.

33. The testimony of each witness is to be

* Hughes. † 73d Article of War. ‡ Sir Jasper Nicolls.

separately and distinctly recorded on the proceedings in this manner:

Lieutenant ——, of the — regiment, a witness on the part of the prosecution, called into court and duly sworn.

34. And when his evidence is finished, an entry is made to this effect :

The witness withdraws.

35. It is usual to take down the evidence by way of question and answer, and on recording each interrogatory the party putting it should be distinctly noted—as thus :

Examined by the Judge Advocate. Cross-examined by the prisoner. Re-examined by the Judge Advocate. Examined by the court.

36. Sometimes, however, a witness gives his testimony in the way of narrative, in which manner it must likewise be taken down in writing, and the Judge Advocate is bound to adhere to the precise words of the witness.*

37. The witness is examined in chief by the party who produces him. The opposite party next cross-examines him; and in case of new matter being introduced on the cross-examination, the party calling him re-examines into that matter; and then the court puts such questions to the witness as it thinks necessary. It is essential to the regularity of the proceedings of a court-martial that this mode of examining witnesses be strictly adhered to; for whenever the parties or the court put questions backward and forward, first one and then the other, it confuses the witness, perplexes the case, and most materially incapacitates the party producing the witness from deriving that benefit from his testimony which he might otherwise have done. If a question as to any material fact has been omitted upon the examination-in-chief, it is to be suggested to

* Kennedy.

the court, which will exercise its discretion in putting it to the witness.*

38. Leading questions, that is, such as instruct the witness how to answer on material points, are not allowed on the examination-in-chief—for to direct witnesses to their evidence would only serve to strengthen that bias which they are generally too much disposed to feel in favor of the party calling them.†

39. All parties may object to any question, but the ground of objection should be clearly stated. The court decides whether the question shall be put, shall be shaped in a different form as to the words, or shall be rejected altogether. The court's decision is final, and the party must rest satisfied with it.‡

40. A party before the court can not object to a question put by the court, though he may to a question put by a member of it, before the collective opinion of the court has been expressed in relation to it. The reception of a question by the court, originating with an individual member, makes it a question by the court; but where rejected, in order to save a contradiction in the record, it is necessarily written down as by a member.§

WITNESS MAY REFRESH HIS MEMORY BY REFERRING TO MEMORANDA.

41. If a witness has made a memorandum of facts, he may refresh his memory by referring to it; he is not allowed to read a written statement of his evidence.|| The opposite party, when cross-examining, is invariably permitted to inspect the memoranda referred to by a witness.¶

EXAMINATION MUST BE IN PRESENCE OF WHOLE COURT.

42. It is essential that the examination of wit-

* Bombay Military Regulations. † Philips' Law of Evidence.
+ Hough. § De Hart. ¶ Starkie. ¶ 1 Philips.

nesses should take place in the presence of all members of the court, and as in fact no act performed by part of the court can be legal, the unavoidable absence of any member, by sickness or otherwise, at any period, necessarily prevents his resuming his seat.*

43. Whenever a member leaves a court with the president's permission, the Judge Advocate ceases to record any evidence during his absence.†

44. If necessary to examine any witness who is prevented attending by sickness, the whole court must adjourn to the place where the witness may be. When all the parties have assembled in the room of the sick person, the Judge Advocate must call over the names of the officers composing the court in the presence of the prisoner, to ascertain that all are present previously to administering the oath, or taking the evidence of the witness. This circumstance, and the return of the court to its former place of assembly, should be minuted on the proceedings—thus:

Captain A. B., having been reported unable, from illness, to leave his quarters, and the surgeon of his regiment being of opinion that it is probable several weeks (or months) may elapse previous to his being able to do so, the court adjourns to the quarters of Captain A. B.; having assembled there, the president, members, and all parties before the court, being present, Captain A. B. is duly sworn.

45. The evidence of the sick man is then taken, after which the court returns to its former place of assembly, when the Judge Advocate must enter a minute to the following effect :

The court having returned to its former place of assembly, and all parties being present, the trial proceeds.

* Bombay Military Regulations, and Opinions of Attorney-General, 2, 415.

† Hough.

EVIDENCE OF ABSENT WITNESS: HOW TAKEN.

46. In cases not capital, the depositions of witnesses, not in the line or staff of the army, may be received. This deposition may be made before a justice of the peace, provided the prosecutor and the person accused are present at the taking of the same, or are duly notified thereof. This provision of the law is confined to non-military persons.* The 74th Article of War, by providing, under certain restrictions, and in cases not capital, that depositions may be taken, negatives their allowance in other cases.†

WRITTEN DOCUMENTS: HOW AUTHENTICATED AND RECORDED.

47. Every kind of writing, if duly authenticated, is admissible at a court-martial; but the original must be produced, and no copy, except of official papers, should be admitted, unless the court is satisfied that it was not in the power of the party to produce the original.‡ An order of the Adjutant and Inspector-General has the force of regulations for the government of all branches of the army, and printed or written copies of the same are duly authenticated when endorsed as official by any assistant adjutant-general, or by any chief of a bureau of that department.§

48. It is a universal rule that, where any document is produced and read by one party, the whole is to be read if the adversary require it; for unless the whole be read, there can be no certainty as to the real sense and meaning of the whole document.†

49. In drawing up the proceedings of courts-martial, all written evidence which tends to prove the charge ought to be recorded in the place to which it applies, but such as merely tends to explain or illustrate the evidence, or such parts of

* Hughes.

† Kennedy.

‡ Opinions of Attorney-General, 2, 344.

§ A. and I. G. General Orders, 147, 1863.

the documents given in evidence as do not immediately relate to the charge, should be annexed to the proceedings as an appendix.*

50. When a written document is handed to the court, it is usual for the Judge Advocate to enter a minute on the proceedings similar to the following:

The prosecutor [witness, or prisoner] here hands into court a letter from _____ to the address of _____, dated ____, which is read, admitted by the court, marked No. 1 [or 2, or 3, or A, B, or C], and attached to the proceedings.

EVIDENCE READ OVER TO WITNESS BEFORE LEAVING THE COURT.

51. It is customary, when deemed necessary by the court, or desired by a witness, to read over to him, immediately before he leaves the court, the record of his evidence, which he is desired to correct, if erroneous; and, with this view, any remark or explanation is entered on the proceedings. It would obviously be improper to read over the record to a witness, or permit him to refer to it when under or previous to cross-examination; no erasure or obliteration is, under any circumstances, admitted.†

WITNESS CAN CORRECT OR AMEND HIS TESTIMONY.

52. At courts-martial a witness may, after having left the court, and even on a subsequent day, request to be readmitted, in order to correct or amend the evidence he has given.* In which case the Judge Advocate thus records, on the proceedings:

*2d witness for } Lieut. _____, _____ regiment,
the prosecution } appears in court, and requests per-
[or defence]. } mission that the evidence he gave
on _____ may be read over to him, to enable him to cor-
rect [amend, or explain] such portion of it which he*

* Kennedy.

† Simmons.

considers was not sufficiently clear (or as the case may be).

The Judge Advocate then enters on the proceedings whatever explanation the witness offers.*

53. When the court has asked all questions of a witness he is directed to withdraw, and this is always noticed in the proceedings, to show that two witnesses were not in court at the same time,† thus :

The witness withdraws, or retires.

ADJOURNMENT.

54. The hour of adjournment as well as that of assembly each day, is invariably to be entered on the record of the proceedings of courts-martial ; and in the event of adjournment at an hour earlier than usual, the cause thereof is to be explicitly stated.‡

55. The usual mode of recording such occurrences is as follows :

It being 3 o'clock, p. m., the court adjourns till 11 o'clock to-morrow forenoon, Wednesday, the —— day of January, 1864.

The other witness not being in attendance, or a member being ill (or as the case may be), the court, at 1 o'clock, p. m., adjourns till 11 o'clock to-morrow forenoon, Tuesday, the —— day of January, 1864.

_____,
Colonel and President.

_____,
Captain.
Judge Advocate.

It is now customary to sign each day's proceedings for the purpose of authentication.

REASSEMBLY, AND FAIR COPY OF PROCEEDINGS.

56. At the close of the business of each day, and in the interval before the next meeting of the court, it is the duty of the Judge Advocate to make

* Hughes.

† Hough.

‡ Madras Mil. Reg.

*

a fair copy of the proceedings, which he continues to copy to the conclusion of the trial.*

57 On the assembly of the court daily, the Judge Advocate calls over the names of the officers composing it; and if any are absent, the cause must be stated and minuted on the proceedings, thus:

Second Day.

11 o'clock, a. m., Wednesday, the —— day of January, 1864.

At a General Court-martial, then held at ——, pursuant to adjournment,

Present—Colonel A. B., Major C. D. (and the names of each of the other officers as first recorded).

Absent—Captain M. N., reported sick (or as the case may be).

Read over the proceedings of yesterday.

58. A fair copy of the previous day's proceedings should always be read, when any trifling error or omission (which might be forgotten after the delay of several days) can be easily rectified; and, above all, it keeps the court in mind of the evidence that has been given; and instead of being a loss of time, it really expedites the business of the court, which would otherwise, perhaps, have to adjourn for a day or two, to enable the fair copy of the proceedings to be prepared.†

PROSECUTION CLOSED.

59. When the prosecution is closed, the Judge Advocate must enter a minute to that effect on the proceedings, thus:

The prosecution is here closed.

After which no further evidence on the part of the prosecution can be admitted,‡ except in reply, as is noticed hereafter.§

* Tytler—Keuncdy. † Hughes. ‡ Ibid. § See section 60.

DEFENCE.

60. The prosecution being closed, the prisoner then enters on his defence.

61. The prisoner having finished the examination-in-chief of each witness, the Judge Advocate cross-examines. The prisoner re-examines to the extent allowed the prosecution, that is, on such points as the cross-examination may have touched upon, and the court puts any questions deemed necessary *

PRISONER'S ADDRESS.

62. The address of the prisoner, prepared subsequent to the reception of all the testimony, is read by the prisoner, or if any cause should prevent his so doing, it may be, at the request of the prisoner, read by his counsel, the Judge Advocate, or a military friend,† an entry of which is made as follows:

The accused, Captain A. B., presented and read [or which was read by his counsel] the written defence (marked A) appended to these proceedings.

63. When the defence is closed, the Judge Advocate enters a minute to that effect on the proceedings, thus :

The defence is here closed.

After which no evidence on the part of the defence can be admitted.‡

REPLY.

64. It is conceded that the Judge Advocate has the right to reply in any case, whether evidence has been adduced by the defence or not. By a reply is understood the right of observing on the evidence in general, or by controverting any new matter which may have been introduced by the prisoner in his defence by other testimony. New matter may be considered as anything introduced

* Simmons.

† De Hart.

‡ Hughes.

into the defence on which the prosecution has had no previous opportunity of addressing the court, and when a reply is desired by the Judge Advocate the court will always grant a reasonable time for its preparation,* and upon his reading it the trial ceases.

COURT MAY RECALL A WITNESS.

65. After the prosecution and defence are closed, it is still competent for a court-martial to recall a witness for the purpose of putting any particular question deemed essential. The parties must, however, be present.†

THE TRIAL FINISHED.

66. When the prosecutor and prisoner have laid their respective cases before the court, the trial is finished, which circumstances should invariably be recorded on the proceedings. A minute similar to the following is usually entered :

The trial is finished, and the parties and witnesses are discharged from further attendance.

67. The court is then closed, and the Judge Advocate reads over the entire fair copy of the proceedings, or such parts of it as may be considered necessary.‡ No evidence should be received after the court has been cleared for deliberation.§

FINDING.

68. The Judge Advocate now proceeds to take the opinions of the members on the evidence in the matter before them, by putting the following question to each individual, commencing with the youngest member : “From the evidence in the matter now before you, how say you of the specification, or charge : is the prisoner guilty, or not guilty ?”*

* DeHart, and Opinions of Attorney-General, 2, 286.

† Simmons.

‡ Hughes.

§ Opinions of Attorney-General, vol. 3, 545.

69. When the charge consists of several counts or specifications, each is put consecutively, first on the specifications and then on the charge. The Judge Advocate, immediately after he has taken the votes on each count or specification, states the result.

70. The majority, in every instance, binds the minority. The opinion of the majority is the opinion of the court.*

71. Courts-martial are bound to exhaust the whole charges that come before them, by EXPRESSLY acquitting or convicting the prisoner of each allegation that is contained in them.†

72. Should it happen, by the organization of the court, or from the accident of sickness or death of any of the members, that there is an equality of votes upon the finding, the doubt must be resolved in favor of the prisoner, and he must have the benefit of an acquittal.* The president has no double or casting vote.‡

73. The court, in its findings, may show that it esteems the prisoner not only innocent of the specific charges preferred against him, but likewise of all impropriety of conduct in any circumstance connected with them, by acquitting him either "fully," or "most fully," or "honorably," or "most honorably," or "fully and honorably," or "most fully and most honorably." The word "honorably" should never be used except in acquitting a prisoner of charges in which his honor is implicated.†

74. Courts-martial may also declare the charge to be "frivolous," "vexatious," "unwarranted," "unfounded," or "malicious," and that the prosecutor, in preferring it, was actuated by private pique and resentment, and not by any motive for the good of the public service.* This is a measure which a court-martial ought always to adopt when the conduct of the prosecutor is deserving of censure, as it is not only a satisfaction due to

* Simmons.

† Kennedy.

‡ Hough.

the prisoner, but as it may often prevent the necessity of another trial.*

75. Should the court be unanimous in their opinion on any point, the Judge Advocate is not authorized to insert the word "unanimous."**

76. Civil juries are required to find a verdict before separating, but such is not the case with military courts. Indeed, the nature of the offences considered by them, pertaining to, and affecting a particular community only, makes it unnecessary. They, therefore, may adjourn from day to day, to consider their finding or sentence.†

SENTENCE.

77. Should the court find the prisoner guilty, the Judge Advocate then proceeds to take their opinions on the punishment to be awarded, by putting to each member, commencing with the youngest, this question: "The court having found the prisoner guilty of such an offence, in your opinion what punishment ought to be awarded?"‡

78. The Judge Advocate, as on the finding, writes down on a sheet of paper the nature and quantum of punishment each member considers should be awarded; and immediately after he has taken the votes of all, states the result. Here also the majority in every case binds the minority, except in cases where the extreme penalty of the law, viz., death, is awarded, when the votes of two-thirds of the court are requisite.§

79. Every member must give his vote, whether he has acquitted or condemned the prisoner.||

80. When the judgment of members differs as to the nature of the punishment, it is usual to separate the question: first, to ascertain the *nature*, the majority deciding; then the quantum.

81. An officer is liable to be adjudged the following punishments: Death; reprimand or admo-

* Griffiths. † De Hart. ‡ Hughes. § Kennedy. || Simmons.

nition, public or private ; cashiering or dismissal from the service ; suspension from rank, pay, and emoluments.

82. The legal punishments for soldiers are : Death ; confinement ; confinement on bread and water diet ; solitary confinement ; hard labor ; ball and chain ; forfeiture of pay and allowances ; discharges from service ; and branding with initial letter on the hip, indelibly. Solitary confinement, or confinement on bread and water, shall not exceed fourteen days at a time, with intervals between the periods of such confinement not less than such periods, and not exceeding eighty-four days in a year.* Non-commissioned officers, in addition to the above, may be sentenced to loss of rank by reduction to the station of a private soldier ; and in all cases where he is to be punished by imprisonment, he must first be reduced.

83. When the Judge Advocate has taken the votes of the members of the court on all points, he draws up the finding and sentence, which, being approved of by the court, must be entered on the proceedings, always in the Judge Advocate's own handwriting.†

84. With respect to the wording of the sentence, in cases discretionary with the court, no special form is necessary. It should obviously be expressed in clear and unambiguous language. In cases not discretionary, the court would do well to adhere as literally as possible to the terms of the statute, or Article of War, by virtue of which the punishment is awarded.‡

85. The sentence recorded must never give any intimation of the majority by which it was pronounced, except that, in case of sentence of death, the fact that two-thirds did concur must be stated. The court should studiously avoid all arguments or special reasons in justification of its sentences.§

* Army Reg., 773. † Kennedy. ‡ Simmons. § O'Brien.

86. The finding and sentence are usually drawn up as follows:

The statement of the parties being thus in possession of the court, the court was cleared for deliberation; and having maturely considered the evidence adduced, finds the accused, Captain A. B., —— regiment, as follows :

Of the first Specification of first Charge : "Guilty."

Of the second Specification of first Charge : " Not Guilty "

Of the third Specification of first Charge : "Guilty, with the exception of the words — — — — ."

Of the first Charge : " Guilty."

Of the Specification of the second Charge : " Not Guilty."

Of the second Charge : " Not Guilty."

And the court does, therefore, adjudge him, the said Captain A. B., —— regiment, to be cashiered.

_____,
Colonel and President.

_____, Captain,
Judge Advocate.

[If the prisoner is acquitted.]

And the court does, therefore, acquit him, the said Lieutenant C. D., —— regiment, of all and every part of the charge.

Signed as above.

MITIGATING CIRCUMSTANCES AND RECOMMENDATION TO MERCY.

87 When any extenuating circumstances attending the offence which ought to be considered in favor of the prisoner, appear in evidence, they should, in strictness, influence the finding. For when, as it is too often the case, a deviation from this simple rule occurs, the punishment becomes inadequate to the finding of the court. This must always be more or less prejudicial to military discipline; and nothing can more contribute to render military law vague and uncertain than

the striking discordances between the findings and sentences of courts-martial. This is generally unnecessary, for courts are not bound to confine themselves to a general verdict of guilty, or not guilty. If courts do their duty in the finding, every extenuating circumstance will have its fair weight in the sentence. Indeed, common justice requires that the prisoner should not be found guilty of a greater crime than the evidence fixes upon him; and, if the specification causes the act to appear more criminal than the evidence will warrant, the court should correct this, and show the exact state of the case. But no extenuating circumstances, not connected with the acts alleged, can have any effect except in inducing a recommendation to mercy *

88. No recommendation to mercy is to be written in the body of the sentence; but it is to be inserted on the same page, if possible, below the signatures of the President and Judge Advocate.†

89. The usual mode of recording recommendations to mercy is as follows :

The court having thus performed the painful duty of awarding punishment, in strict conformity to an Article of War, which deprived it of all discretionary power, begs leave to recommend the case of ————— to the merciful consideration of the confirming authority.

The court may then add any further remarks that may be deemed necessary.‡

CLOSING THE PROCEEDINGS AND MAKING UP RECORD.

90. A blank space of at least a page is invariably to be left at the conclusion of the record of proceedings of all courts-martial, in order that the commander-in-chief, or officer to whom the proceedings are to be submitted, may find room to

* O'Brien, 265.

† Army Regulations, 872.

‡ Hughes.

insert his signature, together with such remarks as the particular case may call for.*

91. When more than one case has been tried by the same court, the record of each case must be made up complete in itself, and must recite all the orders, arranged according to their respective numbers or dates. The proceedings should be written on foolscap, the pages numbered, with a margin of one inch on the left side of each page, and at the top of the odd and bottom of the even pages; through this last margin the sheets to be stitched together,† and then folded twice. The endorsement must be made at the top of the first quarter of the sheet, and is generally as follows:

*Proceedings of a G. C. M., convened
at _____, G. O. No. —, series 1864,
Department S. C., Ga., and Fla.,
Jan. —, 1864.
Confederate States,
vs.
Capt. — — —, }
Co. A, — regt. S. C. V } Case No. —
_____, Judge Advocate.*

The cases should invariably be numbered, as it shows the reviewing officer if any have been lost in forwarding.

REVISION.

92. When a court-martial is ordered to revise its finding and sentence, it is usually minuted in the proceedings in the following manner:

Tenth day.

*Eleven o'clock, a. m., Monday, the ——— day of
January, 1864.*

*At a General Court-martial, reassembled at ———
———, under orders from the Commanding General,
———.*

Present the same members as on Thursday, the —

* Madras Mil. Reg.

† Army Reg., 871.

day of January, 1864, to wit : [Then follows a list of all the officers.]

The Judge Advocate lays before the court the annexed letter [or order] from Head-quarters, Department of South Carolina, Georgia, and Florida, dated _____, which is read.

The court proceeds to reconsider its findings and sentence.

*Revised finding }
and sentence. }*

93. Whenever the proceedings of a court-martial are ordered to be revised, it is illegal for the court to call and examine fresh witnesses ; the revision is to be confined entirely to a reconsideration of the matter already recorded on the proceedings.*

94. Only those present during the investigation of the case, and who voted on the finding or sentence, should be allowed to sit on the re-examination of the reasons upon which the former opinion of the court rested. It also seems more just, both to the prosecution and defence, that *all* the members who voted in the first instance should also be present during the revision of their recorded judgment.

95. When a case is thus remanded for the reconsideration of the court, it is their duty to examine all the points to which their attention has been directed, with the utmost care, patience, and deliberation, which of course would involve a reconsideration of their former opinion, findings, and sentence. These, however, must never be erased, but the revised opinion and sentence are sent in as additions to the record.†

96. It is to be particularly observed, that however excusable an adherence, on conscientious motives, to finding and sentence once pronounced, may be, where error of judgment, arising from a misconception of the law, or of the custom of war in like cases, is brought to the notice of a court-

* Bombay Mil. Reg.

† Lee's Vade Mecum.

martial, supported by respectable authority, its perseverance in error is a dereliction of duty and a baneful example.*

CHAPTER IV

JUDGE ADVOCATE AS PUBLIC PROSECUTOR.

1. The Judge Advocate being prosecutor for the government, must not induce him to omit anything on the records of the court that may be of service to the prisoner; neither is he, on the other hand, to let the cause of justice suffer, and a criminal escape unpunished, through lenity or any other motive whatever. But in the prosecution, though he should act with spirit and resolution against daring offenders, yet he ought to be cautious not to injure and oppress, and, much more, not to add insult to severity. In all cases where misfortune is interwoven with guilt, he should make it appear that detestation of the crime, and a regard to the public safety and service, are not inconsistent with pity to the man, particularly to offenders for the first time; to such whose crimes are small, whose temptations were powerful, and who appear to have been seduced by others.†

2. The duty of a Judge Advocate as a public prosecutor can not be mistaken: he is appointed to prosecute in the name of the government, to search out the truth, and, at the same time, "to obviate a failure of justice;" he is bound to lay before the court the full particulars of the circumstances which are considered to have been an infringement of the ordinances of the army, and in doing so must produce, without partiality or favor to either party, *all* evidence that tends to elicit the truth. However painful it may be to his feelings as an individual to sustain a prosecution, whether the evidence tends to conviction or acquit-

* Bombay Mil. Reg.

† Adye.

tal, his allegiance to his government, his duty to his country, the maintenance of discipline, and, above all, justice, equally demand a faithful discharge of the duty. Let the Judge Advocate, in the performance of this duty, also remember, "the good of the service excuses all things; the convenience of individuals excuses nothing, when the question is one of justice."*

CHAPTER V

DUTIES OF JUDGE ADVOCATE AS LEGAL ADVISER TO THE COURT.

1. Another important duty of the Judge Advocate during the trial, is the instructing or counselling the court, not only in matters of essential and necessary form, with which he must be presumed to be, from practice, thoroughly acquainted, but in explaining to it such points of law as may occur in the course of its proceedings: for which purpose a Judge Advocate ought to instruct himself in the general principles and rules of law, and in the practice of criminal courts.†

2. On every occasion when the court demands his opinion, he is bound to give it with freedom and amplitude; and even when not requested to deliver his sentiments, his duty requires that he should put the court upon its guard against any deviation either from any essential or necessary forms in its proceedings, or a violation of material justice in its final sentence and Judgment.*

3. When a court is deliberating on its finding, it is obvious that the Judge Advocate is likely to be the person best qualified to assist in judging of the credibility and weight of the evidence recorded, and in applying it correctly to the facts at issue. If, therefore, he should observe that the

* Hughes.

† Tytler.

court appeared inclined to find a verdict contrary to such evidence, it is undoubtedly his duty to endeavor, by the expression of his opinion, to prevent it from deciding so erroneously.*

4. But when the court is passing sentence, the Judge Advocate ought not then to offer any opinion; for though he may be considered to be in no slight degree responsible for the correctness of the finding, he is in no means answerable for the adequacy or inadequacy of the punishment which the court may award.*

5. In cases, however, where the Judge Advocate thinks that a particular Article of War applies to the offence of which a prisoner has been found guilty, it is his duty to point it out to the court; and if any question arises relative to its applicability, it will not be disputed that he ought also to give his opinion on such an occasion.*

CHAPTER VI.

DUTIES OF JUDGE ADVOCATE AFTER THE PROCEEDINGS OF A COURT-MARTIAL ARE CLOSED.

1. The Judge Advocate lays the proceedings of courts-martial before the commander-in-chief, to whom he makes his report. Though he is very properly forbidden to discover or disclose the vote or opinion of any particular member, still he is not precluded by the article, when he makes his report, if required so to do, to state any circumstance within his knowledge which may not be recorded on the proceedings, which the commander-in-chief should be confidentially informed of. So long as it does not extend to the prohibited discovery or disclosure of the vote or opinion of any particular member, it may go to the general opinion of the court, which can not affect the members individually or collectively.†

* Kennedy.

† Hough.

2. It is proper that the Judge Advocate should retain in his own possession the original minutes of the proceedings drawn up by him in court during the course of the trial, that in case of any after questions which may be moved in the ordinary courts of law, touching the conducting or result of the trial, the Judge Advocate may have recourse to them as necessary documents, if he should be called upon to give evidence in relation thereto.*

3. When the proceedings upon the trial of the last prisoner to be tried before any general court-martial are forwarded to head-quarters, the Judge Advocate is invariably to make a report to the adjutant-general that the court is adjourned until further orders, and that there are not any more prisoners for trial.†

CHAPTER VII.

ON PREPARATION OF CHARGES.

1. The technical strictness used in an indictment is not necessary in the framing of a charge, but it must be sufficiently precise in specifying the fact or facts alleged to have been committed, so as to show whether or not they constitute the criminal offence intended.

2. The name of the prisoner, his rank, company, and regiment should be written at full length, all the dates must be in words and not in figures, and in describing the "time" and "place" "when" and "where" the fact to which criminality is attached took place, the utmost precision must be observed, or else the words "on or about"—"at or near"—must be inserted.‡

3. Facts of a distinct nature are not to be included in one and the same charge, or specification

* Tytler.

† Madras Mil. Reg.

‡ Bombay Mil. Reg.

of a charge; but each different fact is to be set forth in a distinct charge or specification.*

4. All extraneous matter is to be carefully avoided, and nothing is to be alleged but that which is culpable, and which the complainant is prepared to substantiate before a court-martial.*

5. The charge must not state that the offence alleged has been committed in breach of any particular Article of War; but in cases in which the allegation comes directly under any enactment, it is to be set forth in the terms therein used; and when it is a disorder or neglect not specially provided for, it is to be charged as "conduct to the prejudice of good order and military discipline."*

6. In framing a charge for insubordinate or improper language, the expressions which may have been made use of by the prisoner are not to be specified, as such are quite unnecessary for the ends of justice; and the offence may be equally developed under the simple allegation of "unsoldier-like," or "insubordinate," or "improper language," as by inserting the disgusting words of a drunken or mutinous soldier. The words, however, must be given in evidence in support of the charge.*

7. To all charges preferred against officers and men, a list of witnesses should be appended; and it is proper that there should also be a brief statement of what each witness will be expected to establish.

8. A specification should be a concise statement of some act or omission of duty, which, if established, would constitute a military offence for which some particular Article of War provides or authorizes a measure of punishment. Redundant words or phrases, and mere legal conclusions, should be rejected.

* Bombay Mil. Reg. and De Hart.

FORMS FOR THE PREPARATION OF CHARGES FOR CRIMINAL OFFENCES, WITH THE AUTHORIZED PUNISHMENTS, AGREEABLE TO THE ARTICLES OF WAR.

ARTICLES OF WAR.	CHARGE.	SPECIFICATION.	PUNISHMENT.
5	<i>Using contemptuous (or disrespectful) words against the President of the Confederate States.</i>	In this, that he, Captain John Doe, Company D, 20th regiment So. Ca. artillery, on or about the first day of April, 1864, at Battery Lee, in Charleston harbor (hereinafter being referred to as such), did make use of the following contumacious or disrespectful words against his Excellency Jefferson Davis, the President of the Confederate States [here insert the language].	<i>Officer—Cashingier, or discretionary. Soldier—Discretionary.</i>
6	<i>Conduct prejudicial to good order and military discipline.</i> <i>Mutiny,</i> <i>or</i> <i>Sedition.</i>	Did behave himself disrespectfully toward Captain Richard Roe, his commanding officer, in that he [here state how he was disrespectful]. Did attempt to incite among the troops composing the garrison at said battery a spirit of resistance to the government of the Confederate States, by endeavoring to persuade them to desert the said post in a body, taking with them their arms, forcibly to resist any attempt to arrest them.	<i>Discretionary.</i>
7		Knowing that the garrison of the said battery intended to mutiny, did not immediately give information thereof to his commanding officer.	<i>Death, or discretionary.</i>
8	<i>Misprision of mutiny.</i>	Did strike [or draw his sword, or lift up his musket against] Captain John Smith, 50th regiment (Georgia) infantry, his superior officer, while in the execution of his office.	<i>Death, or discretionary.</i>
9	<i>Striking his superior officer while in the execution of his office.</i>	While commanded, in a written order, by the colonel commanding his regiment, to report for duty in person to the major-general commanding, which said order was according to the tenor following [here insert order], did refuse to obey, and did not obey the same.	<i>Death, or discretionary.</i>
9	<i>Disobedience of orders.</i>	Did sign the following certificate relating to the absence of Lieutenant Charles Brown, Company A, 20th regiment So. Ca. artillery [here insert certificate], which certificate was false.	<i>Cashingier.</i>
14	<i>Conduct unbecoming an officer and a gentleman.</i>	Did knowingly present to the mustering officer, then and there mustering said company for pay, from the 1st day of May, 1864, to the 30th day of June, 1864, one Hiram Powers, in the place and stead and under	<i>Cashingier, with infamy.</i>
15	<i>Knowingly making a false muster.</i>		

		the name and designation of one Private Noel Patrick, of the said company and regiment, although he knew that the said Noel Patrick was then and had been for a long time absent from his company.	<i>Cushiering, with infamy.</i>
16	<i>Bribery.</i>	Did receive the sum of one thousand dollars by way of gratification, on mustering Company E, 50th regiment So. Ca. infantry, on the day and year above mentioned.	<i>Cushiering.</i>
17	<i>Conduct unbecoming an officer and a gentleman.</i>	Did muster as a private, in Company E, 50th regiment So. Ca. infantry, one Thomas White, as a soldier, though the said Captain John Doe well knew that the said Thomas White was not then a soldier.	<i>Cushiering.</i>
18	<i>Conduct unbecoming, etc.</i>	Did make a false return to the major-general commanding, of the ammunition and ordinance stores at said battery, of which he had charge as ordnance officer, which said return was in the words and figures following [here insert], knowing the same to be false.	<i>Cushiering.</i>
19	<i>Conduct prejudicial to good order and military discipline.</i>	Being in command of said battery, did neglect to make an exact return of its garrison, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence.	<i>Discretionary.</i>
20	<i>Desertion.</i>	Did desert the service of the Confederate States.	<i>Death, or discretionary.</i>
21	<i>Absence without leave.</i>	Did, without authority, absent himself from his company and regiment, and remained thus absent until on or about the thirtieth day of October, 1864.	<i>Discretionary.</i>
22	<i>Desertion.</i>	Did enlist in Company A, 20th regiment So. Ca. artillery, he having no transfer or discharge from his original company.	<i>Or,</i>
22	<i>Receiving and entertaining a soldier knowing him to be a deserter.</i>	Did receive and entertain Private John Smith, Company A, 40th regiment So. Ca. Infantry, knowing that he was without a regular discharge from his said company.	<i>Death, or discretionary.</i>
23	<i>Advising [or persuading] a soldier to desert.</i>	Having enlisted Private John Smith in his said company, did not, on discovering him to be a deserter from Company A, 20th regiment So. Ca. artillery, immediately confine him, and give notice thereof to the corps in which he last served.	<i>Cushiering.</i>
25	<i>Sending a challenge to fight a duel.</i>	Did advise (or persuade) Private John Smith, Company A, 20th regiment So. Ca. artillery, who had received pay and been duly enlisted in the provisional army of the Confederate States, to desert the service of the Confederate States.	<i>Death, or discretionary.</i>
		Did send to Captain Richard Roe, Company E, 40th regiment So. Ca. Infantry, a challenge to fight a duel.	<i>Cushiering.</i>

FORMS FOR THE PREPARATION OF CHARGES, ETC.—Continued.

Articles of War.	CHARGE.	CONFINEMENT.	PUNISHMENT.
25	<i>Conduct prejudicial, etc.</i>	Being in command of a guard at said battery, and knowing of a contemplated duel between Captain John Doe, Company D, 20th regiment So. Ca. artillery, and Captain Richard Roe, Company E, 40th regiment So. Ca. infantry, did permit them, or either of them, to pass the guard for the purpose of fighting a duel.	<i>Custodial.</i>
27	<i>Conduct prejudicial, etc.</i>	While having an affray with Richard Roe, Company E, 40th regiment So. Ca. infantry, blows having passed between them, was ordered under arrest by Lieutenant Henry White, of his said company, did refuse to obey, and did not obey the same.	<i>Discretionary.</i>
29	<i>Conduct prejudicial, etc.</i>	Being the regularly appointed sutler for the said post, did sell, before the beating of the reveille, spirituous liquors to Privates John Smith and Samuel Brown, of Company B, 20th regiment So. Ca. artillery.	<i>Dismissal.</i>
31	<i>Conduct unbecoming, etc.</i>	Being the commanding officer, did require Peter Jones, the sutler of said post, to pay to him for his own private advantage a per centage of one per cent. on all sales made at said post.	<i>Dismissal.</i>
32	<i>Conduct prejudicial, etc.</i>	Being the commanding officer, and having informed by Henry Green, a citizen of the Confederate States, that he had been brutally beaten and robbed by Privates John Smith and Samuel Jones, of Company B, 20th regiment So. Ca. artillery, did refuse or omit to see justice done to the said offenders.	<i>Dismissal, or discretion.</i>
35	<i>Embezzlement.</i>	Did sell for his own private advantage [state what], which said clothing had been placed in his charge, as quartermaster, for issue to the men of his brigade.	<i>Restitution, forfeiture of pay, and dismissal.</i>
36	<i>Wilful misapplication of stores belonging to the Confederate States.</i>	At a dinner given by him to certain friends at his quarters, did drink, and cause to be drank, three gallons of whiskey, knowing the same to belong to the hospital stores of the Confederate States, placed in his care for the use of the sick and wounded of his, the said surgeon's, regiment.	<i>As above.</i>
	<i>Neglect of duty.</i>	Did wilfully neglect and fail to provide the animals under his charge with any food whatsoever for ten days or thereabouts.	<i>As above.</i>

37	<i>Wilful waste of ammunition belonging to the Confederate States.</i>	Did use in hunting birds and other game the ammunition delivered out to him, to be employed in the service of the Confederate States.	<i>Discretionary.</i>
38	<i>Wilful loss of arms and accoutrements belonging to the Confederate States.</i>	Did, upon the approach of the enemy, wilfully throw away his musket and cartridge-box, and abandon the same.	<i>Restitution, and discretionary.</i>
39	<i>Embezzlement [or wilful misapplication] of government money.</i>	Did embezzle [or misapply] the sum of ten thousand dollars or thereabouts, which said sum of money was intrusted to him for payment to the troops of his, the said quartermaster's, brigade.	<i>Restitution, and embezzling.</i>
45	<i>Drunkenness on duty.</i>	While officer of the day [or one of the picket guard], was so drunk that he could not properly discharge his duty.	<i>Officer—Cashtiering.</i>
46	<i>Sleeping on post.</i>	While regularly posted as sentinel at Post No. 4, between the hours of one and three, a.m., was lying down and asleep.	<i>Soldier—Discretionary.</i>
47	<i>Conduct prejudicial to good order, etc.</i>	Did hire one John Green, a civilian, to perform his duty as a soldier.	<i>Death, or discretionary.</i>
48	<i>Conduct prejudicial to good order, etc.</i>	Knowing that Private John Smith, of his said company, had hired John Green, a civilian, to do his duty as a soldier, did connive at such hiring as aforesaid.	<i>Officer—Discretionary.</i>
49	<i>Occasioning a false alarm.</i>	Did cause the "long-roll" to be sounded [or fire signal rocket, or discharge a piece of ordnance], whereby a false alarm was occasioned in the garrison of said post.	<i>Non-com. officer—Reduction.</i>
50	<i>Conduct prejudicial to good order, etc.</i>	While regularly detailed as guard, did, without authority, quit his said guard, and remained absent for three hours or thereabouts.	<i>Discretionary.</i>
51	<i>Assaulting one bringing provisions to the camp.</i>	Did violently assault one James Green, a farmer, who had brought provisions or other necessaries to the said camp (this offence can only be committed beyond Confederate States).	<i>Death, or discretionary.</i>
52	<i>Misbehavior before the enemy.</i>	While his company was fighting [or was advancing to meet the enemy], did run away and abandon his company in the face of the enemy.	<i>Death, or discretionary.</i>
		<i>Or,</i>	
53	<i>Revealing the watchword.</i>	While in charge of a picket p-t, which he was commanded to defend, upon the approach of the enemy did shamefully abandon the same, using no effort to hold it as commanded.	
		Being in possession of the watchword as officer [or one] of the picket guard, did make known the said watchword to Private John Brown, of his said company, who was not entitled to receive it.	<i>Death, or discretionary.</i>

FORMS FOR THE PREPARATION OF CHARGES, ETC.—Continued.

Articles of War.	CHARGE.	SPECIFICATION.	PUNISHMENT.
54	<i>Spoliation.</i>	Did enter the enclosure of one James Green, a citizen of the Confederate States, and did wantonly [or maliciously] destroy his outbuildings, carrying away the lumber, doors, and windows of the same.	<i>Discretionary.</i>
55	<i>Forcing a safeguard.</i>	Did force the safeguard placed by the command of General Jackson upon the premises of one James Green, a citizen of the United States, and did [here state conduct of accused]. This offence can only be committed beyond the Confederate States.	<i>Death.</i>
56	<i>Giving aid and comfort to the enemy.</i>	Did harbor [or protect, or furnish with money, victuals, or ammunition] George Black, of the United States army, knowing him to be an escaped prisoner of war [or a spy].	<i>Death, or discretionary.</i>
57	<i>Holding correspondence with [or giving intelligence to] the enemy.</i>	Did, by means of signal lights [or rockets], hold correspondence with the naval forces of the United States blockading the port of Charleston aforesaid, whereby intelligence was given, or intended to be given, of certain military movements.	<i>Death, or discretionary.</i>
59	<i>Murder or Sedition.</i>	Did combine together with [here mention all the names, or all may be joined and tried under one charge], and [did compel, Brigadier-General John White, the commanding officer of the said battery, to surrender [or abandon] the said battery to the enemy.	<i>Death, or discretionary.</i>
77	<i>Breach of arrest.</i>	Having been placed under arrest by Colonel Henry Brown, his commanding officer, and ordered to confine himself to his barracks, did go beyond the limits of his confinement without authority so to do.	<i>Cushiering.</i>
83	<i>Conduct unbecoming an officer and a gentleman.</i>	Did, in the most public and indecent manner, improperly converse and associate with a common prostitute [or use the most blasphemous, obscene, vulgar, and ungenteelmannly language], to the great annoyance of ladies and other persons then and there assembled, and greatly to the scandal and disrepute of the service.	<i>Dismission.</i>
42	<i>Lying out of his quarters without leave.</i>	Did lie out of his quarters without leave of his superior officer.	<i>Discretionary.</i>

The names of the witnesses must be given in full, with their designation, and where they are to be found. The charges and specifications must be signed by the person preferring them, and should be forwarded to the officer commanding immediately above him, whose duty it is to see that a copy thereof is served upon the accused, and then to forward the original to Corps or Department Head-quarters, through the regular channel.

The details of the case, and a statement of what each witness is expected to prove, should be appended in a note to the charges, for the use of the Judge Advocate upon the trial.

“ It is the duty of company officers, when charges are pending against men in their command, to see that they are informed as to their nature and consequences, and to afford them all the aid in their power in preparing their defence. This is one of the most important duties arising from the relation of an officer to his men, and is one to which generally very little attention is paid.”

